IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12350 of 2001
with
Special Civil Application No.12351 of 2001

to

SPECIAL CIVIL APPLICATION No 12358 of 2001

with
Special Civil Application Nos.10559 of 2001, 10958,
10970, 10971, 10972, 10973, 10979, 10982
and 10983 of 2001
with
Special Civil Application Nos. 11000 of 2001
with
Special Civil Application Nos. 11001, 11002,
11017, 11018, 11044, and 11275 of 2001
with
Special Civil Application Nos. 12360 to 12377 of 2001
with
Special Civil Application Nos. 12378 of 2001 to
12384 of 2001
with
Special Civil Application Nos. 12385 to 12391 of 2001
with
Special Civil Application Nos. 12392 of 2001
to 12406 of 2001
with
Special Civil Application Nos. 12410, 12411,
12413, 12416 to 12431 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAJAPATI HARISHKUMAR KARSHANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR NIRZAR S DESAI for the Petitioner.

Mr.S.N. Shelat, Advocate General, with

Mr.A.D. Oza, GOVERNMENT PLEADER, for Respondent No. 1

..... for Respondents No. 2-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/03/2002

ORAL JUDGEMENT

In all these petitions, common point of law as well as facts are involved and, accordingly, the same are disposed of by this common order.

The petitioners were appointed as ad hoc Lecturers in Government Polytechnics. The petitioners applied for appointment on the aforesaid post in response to the public advertisement which was given for the purpose of recruiting ad hoc Lecturers in various Polytechnics in the State of Gujarat. Accordingly, appointment orders were issued in favour of the petitioners for a period of 11 months. Such ad hoc appointments were given since, at the relevant time, G.P.S.C. selected candidates were not available, and it is not in dispute that the posts in question can be filled up only through G.P.S.C. selected candidates. Therefore, by way of temporary measure, till G.P.S.C. candidates are available, these petitioners were appointed on ad hoc basis for a period of 11 months. Thereafter, the services of the petitioners were terminated since the original period of 11 months, for

which they were appointed, came to an end. One of such termination orders is annexed in Special Civil Application No.10958 of 2001. It is not in dispute that identical termination orders were also issued to each of the petitioners. Even though the order was passed on 19.11.2001, it was given retrospective effect from 8.11.2001. Having been aggrieved by the termination orders, the petitioners have filed these petitions, challenging the said orders.

On behalf of the petitioners, it was contended that since the petitioners were appointed after regular procedure of selection, their services could not have been terminated, especially when no other G.P.S.C. candidate is available. It is submitted that the petitioners, who were appointed on ad hoc basis, cannot be replaced by other ad hoc employees. It is also submitted that, in any case, till regularly selected G.P.S.C. candidate is available, it is not open for the respondents to put an end to the services of the petitioners in this manner.

On behalf of the Government, Mr.S.N. Shelat, learned Advocate General, has placed on record copy of an order passed in a group of petitions, i.e., Special Civil Application Nos. 6030, 6031, 6032, 6034 and 6035 of 1992. This Court (Coram : M.S.Parikh, J.) disposed of those petitions by an order dated February 7, 1996. This Court gave following directions in the aforesaid matters :-

> " ... ...
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> 4. It is, therefore, directed that the petitioners shall be continued in service subject to the same terms and conditions on which they were appointed and they shall be so continued in service till the regularly selected candidates from G.P.S.C. are available or as and when the other regularly selected candidates are made available. It will be open to the respondents to terminate the services of the petitioners, in case such candidates are available or in case the petitioners' services are not required for want of post or on account of non-availability of requisite strength of students. As and when termination is to be made the principle of "last come first go" shall be applied.

... ..."

The learned Advocate General has submitted that the Government has no objection if similar type of directions are given in the present petitions.

Mr.Oza, learned Advocate for the petitioners, however, submitted that the respondents should not give any break and they should not give any tenure appointment to the petitioners for a fixed period of 11 months.

However, considering the fact that the posts in question can be filled in only through the G.P.S.C. selected candidate, in my view, similar directions, which are given by this Court in the aforesaid Special Civil Applications, are also required to be given in these cases.

In the facts and circumstances of the case, therefore, it is directed that the respondents should continue the present petitioners in service on the same terms and conditions on which they were initially appointed by the Department, and the respondents are directed to continue them in service till the regularly selected candidates from G.P.S.C. are available or as and when the other regularly selected candidates are available. It will be open to the respondents to terminate the services of the petitioners in case such candidates are available or in case the petitioners' services are not required for want of post or on account of non-availability of requisite strength of students. It is also clarified that as and when any termination order is required to be passed, the respondents shall follow the principle of "Last Come, First Go". Since the petitioners are already in service, it is not necessary to give any direction to reinstate the petitioners in service.

The effect of this order is that the petitioners are deemed to be continued in service irrespective of the orders which are passed, terminating their services.

The petitions are allowed to the aforesaid extent. Rule in each of these petitions is accordingly made absolute to the aforesaid extent with no order as to costs.

7th March, 2002 (P.B. Majmudar, J.)

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